IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Crl.MC.No. 2447 of 2007()

CC.174/1995 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR

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PETITIONER: ACCUSED NO.5 IN LPC 197 OF 2003 OF JFCM PAYYANNUR

KHALEEL, AGED 35 YEARS, S/O.SIVALI ALI,
THOUFEEQ MANZIL, MADAYI P.O., KANNUR DIST.

BY ADV. SRI.T.K.SAIDALIKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL

RESPONDENTS:

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1. THE SUB INSPECTOR OF POLICE,
PAYANGADI POLICE STATION.

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2447 of 2007

Dated this the 31st day of July, 2007

O R D E R

The petitioner is the 19th accused in Crime No.39/1995 of Payangadi Police Station registered, inter alia, under Section 448 r/w 149 I.P.C. Investigation was completed. Final report was filed. The petitioner and some other co-accused were not available for trial. As against the accused who were available before the learned Magistrate, trial continued. The accused who faced trial were found not guilty and acquitted of the offences alleged against them. It is submitted that only Pws 1 and 2 were examined. They were the victims. They, it is submitted, had filed petitions before the learned Magistrate to apprise the learned Magistrate of the fact that they have compounded the offences allegedly committed by the accused persons who stood trial. The case against the petitioner and some other accused who were absconding has been split up. The learned Magistrate has taken coercive steps against the petitioner and the other accused. The petitioner, in these circumstances, has come to this Court with a prayer that the powers under Section 482 Cr.P.C may be invoked to quash he proceedings against the petitioner.

2. What is the reason ? The only ground urged is that the co-accused have been acquitted in the trial held against them. Such acquittal was, in addition to paucity of the evidence in this case, on the basis of the alleged application for composition filed by Pws 1 and 2. It is, in these circumstances, prayed that continuation of the prosecution as against the accused who did not

face trial would be unnecessary waste of public money and needless harassment of such accused persons. It is, in these circumstances, prayed that powers under Section 482 Cr.P.C may be invoked. The position of law has now been stated clearly in the decision of the Full Bench in [**Moosa v. Sub Inspector of Police** [2006(1) KLT 552]. It is now trite that the mere fact that the co-accused who faced trial have been found not guilty and acquitted on the basis of evidence adduced in such case cannot confer any benefit or advantage on the absconding co-accused. The discussions in para.8 of the judgment of acquittal in favour of the accused who faced trial clearly show that the court took note of the fact that the said accused persons have not been identified in the case. The non identification of the accused, who faced trial, cannot certainly confer, on the accused who did not face trial, any benefit or advantage. I am satisfied, in these circumstances, that this is not a fit case where the powers under Section 482 Cr.P.C can or ought to be invoked. The petitioner must resort to the ordinary and normal procedure of appearing before the learned Magistrate.

3. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously-on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-